ne Court, U.S.
FILED

No. _____

06-896 DEC 8 - 2006

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In The

Supreme Court of the United States

KAU-KAU TAKE HOME,

Petitioner,

v.

CITY OF WICHITA,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Kansas

SUPPLEMENTAL APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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IN THE DISTRICT COURT, SEDGWICK COUNTY,
KANSAS CIVIL DEPARTMENT

KAU-KAU TAKE HOME, NO. 1, INC. and PEGGY SCHOENHOFER, Plaintiffs, vs. CITY OF WICHITA, Defendant.	)	Case No. 04CV1541

JOURNAL ENTRY OF JUDGMENT

(Filed Jul. 6, 2005)

NOW ON THIS 2nd day of June, 2005, this matter comes on for hearing on defendant's Motion for Summary Judgment. The plaintiffs appear by and through their attorneys, James B. Jackson and Joseph Borich. The defendant appears by and through its Senior Attorney, Douglas J. Moshier. There are no other appearances.

WHEREUPON, the court, after listening to the arguments of counsel, reviewing the file and record herein,

and being otherwise fully and duly advised in the premises, finds and concludes as follows:

1. The defendant's uncontroverted facts numbered 1 through 7, 9 and 10 were not controverted by the plaintiffs and they are adopted by the court.

2. The defendant's uncontroverted fact numbered 8, while controverted by the plaintiffs, is not material to the court's decision herein.

3. While defendant's claim that the plaintiff Peggy Schoenhofer is not a proper plaintiff is technically correct, the court believes, in the interest of complete resolution of the issues in this matter, that she should be included as a plaintiff as a matter of permissive joinder.

4. The claims of the plaintiffs concerning repeated, temporary occupation of the subject property by vehicles and persons associated with the defendant's construction of the highway and the Tyler Road intersection are not takings but incidents of trespass.

5. The defendant's first claim regarding the plaintiff Peggy Schoenhofer is denied.

6. The plaintiff's attempt to state a cause of action sounding in tort must fail because plaintiffs did not comply with the provisions of K.S.A. 12-105b(d), a condition precedent to bringing a tort action against a municipality.

7. The plaintiffs have failed to state a cause of action in inverse condemnation for the repeated, temporary occupations of the subject property by vehicles and persons associated with the highway construction because they do not state any

specific dates or times when these incidents occurred.

8. The plaintiffs' claims that the defendant should have constructed the highway and the Tyler Road intersection in a manner that would have had a less negative impact on the subject property do not state a cause of action. This court may not substitute its judgment for the that of the governing body of the defendant.

IT IS THEREFORE BY THE COURT CONSIDERED, ORDERED, ADJUDGED AND DECREED that the defendant is granted summary judgment as to all claims of the plaintiffs herein.

IT IS SO ORDERED.

Mark A. Vining
Mark Vining, District Judge

/s/ Joseph Borich
Joseph Borich III, #15234
Attorney for Plaintiffs

/s/ James B. Jackson
James B. Jackson, #14319
Attorney for Plaintiffs

/s/ Kelly J. Rundell
for Douglas J. Moshier,
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